Supreme Court, U.S.
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No. _____

TX CCrA NO. PD-0215-09
TX COA NO. 09-05-00480-CR/
TX COA NO. 09-07-00404-CR

In The

Supreme Court Of The United States

ELIJAH WHITE RATCLIFF,
Petitioner

v.

THE STATE OF TEXAS,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE NINTH
DISTRICT OF TEXAS

PETITION FOR WRIT OF CERTIORARI

Elijah W. Ratcliff *
P.O. Box 862
Livingston, Texas 77351
(903) 948-3089

* *Petitioner*

QUESTIONS PRESENTED

I. WHETHER PETITIONER WAS ENTITLED TO REMOVE FROM STATE COURT TO THE UNITED STATES DISTRICT COURT AN ABUSIVE PROSECUTION WHEREIN HE IS DENIED AND CANNOT ENFORCE IN THE COURTS OF SUCH STATE HIS RIGHTS UNDER SPECIFIED CONSTITUTIONAL AND STATUTORY PROVISIONS FOR EQUAL RIGHTS OF CITIZENS AND ENUMERATED PERSONS.

II. WHETHER THE APPEAL BOND WITH NOTICE OF APPEAL INITIALLY FILED AND POSTED BY PETITIONER WAS SUFFICIENT TO SOLICIT INITIATION OF THE RECORD PREPARATION PROCESS AS EFFECTIVELY SERVED ON THE STATE DISTRICT CLERK AND COURT REPORTER FOR THE 258TH JUDICIAL DISTRICT OF TEXAS.

III. WHETHER, FOLLOWING THE EFFECTIVE DIMINUTION OF PETITIONER'S SOLVENCY STATUS, THE COURT OF APPEALS ABUSED ITS DISCRETION IN DECLINING TO ASCRIBE AND HONOR THE ULTIMATE ORDER OF THE TRIAL COURT SUSTAINING PETITIONER'S MOTION AND AFFIDAVIT TO PROCEED IN THE APPEAL WITHOUT PREPAYMENT OF COSTS.

IV. WHETHER PETITIONER'S FILING OF A

PETITION FOR DISCRETIONARY REVIEW WAS TIMELY UNDER THE PERTINENT RULES OF COURT.

V. WHETHER CONTRAVENTION BY THE STATE TRIAL COURT OF PROVISIONS UNDER THE FEDERAL CIVIL RIGHTS REMOVAL STATUTE RENDERED ITS JUDGMENT OF CONVICTION VOID.

VI. WHETHER PRE-TRIAL ERRORS COMMITTED BY THE TRIAL COURT REGARDING DISCLOSURES; VAGUENESS OF THE INDICTMENT; DOUBLE JEOPARDY; ACCESS TO AND CONFRONTATION OF WITNESSES; AND A HISTORY OF GRAND JURY DISCRIMINATION UNABATED FOR THE IMMEDIATE PROCEEDING RENDER THE JUDGMENT OF CONVICTION VOID .

VII. WHETHER THE POWERS AND DUTIES OF THE APPELLATE COURTS OF THE STATE OF TEXAS EXTENDED TO MANDATING THE VOID CHARACTER OF EACH JUDGMENT OF CONVICTION FROM THE TRIAL COURT ATTRIBUTABLE TO A MULTIPLICITY OF PRE-TRIAL, TRIAL AND POST CONVICTION ERRORS UPON THE COMPILATION OF THE APPELLATE RECORD AS DULY REQUESTED BY PETITIONER.

VIII. WHETHER PETITIONER IS

ENTITLED TO THE PLENARY APPELLATE RECORD AS PROPERLY REQUESTED RELEVANT TO THE IMMEDIATE APPEAL INCLUDING A MANDATE OR WRIT DIRECTING THE VOIDING AND EXPUNGING OF HIS CONVICTION AND DETENTION BY RESPONDENT AND ITS JUDICIAL AND CORRECTIONAL OFFICIALS.

LIST OF PARTIES

The parties to the immediate proceeding are accurately depicted by the caption hereto.

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No. _____

TX Ct. Cr. Ap. No. PD-0215-09

IN THE SUPREME COURT

OF THE UNITED STATES

ELIJAH WHITE RATCLIFF,

PETITIONER

VS

THE STATE OF TEXAS,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Elijah White Ratcliff, respectfully, prays that the Writ of Certiorari issue, in conjunction with necessary orders, compelling the Court of Criminal Appeals of Texas, No. PD-0215-09, and the Court of Appeals, Ninth District of Texas, No.09-07-00404-CR and No. 09-05-00480-CR, to require the District Clerk: Kathryn E. Clifton; the Court Reporter: Graciela I. Caka; and the Presiding Judge; Elizabeth E.

Coker, of the District Court of Polk County, Texas, 258th Judicial District, No. 18,176 and No. 18,177, to prepare, certify and submit to this Court the complete Appellate Record, as duly requested and repetitiously by Petitioner, in accordance with the **Texas Rules of Appellate Procedure** for obtaining the Appellate Record before the Ninth Court of Appeals of Texas. The Court Reporter has declined to respond to Petitioner's written inquiry within the past six (6) months requesting a quote for preparation of the subject Reporter's Record, and the District Clerk responded with a sarcastic letter quoting the costs for the Clerk's Record at less than One hundred ($100.00) dollars, which true and accurate Appellate Record will reflect the infringements upon Petitioner's right to be free from the subject illegal detention and restraints upon liberty. Upon reviewing the Appellate Record, including, and particularly, the Brief of Appellant, No. 09-05- 00480-CR, and the Brief of Appellant-Supplemental, No.09-07-00404 - CR, filed in the Court of Appeals, Ninth District of Texas, the Supreme Court of the United States is requested to issue orders directing Respondent to execute the necessary and proper rulings and instructions to relieve and expunge Petitioner of the underlying illegal detention and restraints upon his liberty.

OPINIONS BELOW

An Order of Dismissal was entered in the immediate proceeding below by the Court of

Criminal Appeals of Texas, No. PD-0215-09, without an Opinion, on the 3rd day of June, 2009, reciting that the filing of the Petition was untimely, notwithstanding, a letter from the Clerk of the Court of Appeals, Ninth District of Texas, dated the 8th day of April, 2009, acknowledging that the Petition was timely filed, by ten (10) days, on the 8th day of April, 2009, in conformity with **Vernon's Ann. Rules Ap. Proc., rule 68**, which requires no further filing initiatives by the Appellant, Petitioner herein, to perfect the docketing process from No. 09-07-00404-CR, in the Court of Appeals, Ninth District of Texas. However, the Texas Court of Criminal Appeals entered a further docket entry, without an Order or Opinion, indicating a refusal of the subject Petition for Discretionary Review on September 22, 2009 (Appendix p. A-1).

The restraints induced upon Petitioner's liberty following a void conviction: November 15, 2005, and a void revocation of probation, resulted in Petitioner being without access to the plenary record, and obtaining copies thereof remains the essential element to the immediate Petition for Writ of Certiorari (See **In re Elijah White Ratcliff**, No. 08-8862, Supreme Court of the United States). However, the controlling Memorandum Opinion under each of the related docket numbers is attached hereto as an Appendix A, Appendix B and Appendix C, pp A-1 - A-6). in sequence. Petitioner's copy of the partial record was forwarded to the Clerk of this Court in

conjunction with the related mandamus proceeding referenced above, and it has not been returned. Thus, references to such partial record by this Petition will rely on the assumption that such partial record remains in the custody of the Clerk of the Supreme Court of the United States.

The Order and Opinion controlling jurisdiction herein were issued by the Court of Appeals, Ninth District of Texas,, No. 09-07-00404-CR, on the 17th day of December, 2008, and a Motion for Rehearing was timely filed therein which was denied on the15th day of January, 2009. Thus, this Petition for Writ of Certiorari is timely within the extended limits consistent with **Title 28, United States Code, Sections 1257(a) and 2101©**, as well as **U.S. Sup. Ct. Rules, rule 13.1, 28 U.S.C.A.**

JURISDICTION

Jurisdiction of the Supreme Court of the United States in this Petition is invoked pursuant to **Title 28, United States Code, Sections 1257(a), 1446(c)(3), 1447(d), 1651 and 2101©**. *State of Georgia v Rachel*, 86 S.Ct. 1783 (1966), 384 U.S. 790.

Following the State trial Court's fabrication of a conviction November 15, 2005, and revocation of probation: September 11, 2007, Petitioner filed a timely Notice of Appeal and State court Petition for Writ of Mandamus (Appendix D, Entries of 10/28/2005 and 11/07/2005, p. A-8), but the State Appellate courts have refused to address the issues and the relief to which Petitioner is

entitled, or require the District Clerk or Court Reporter to provide the plenary Appellate Record, even though it was properly requested by Petitioner, which would show Petitioner's absolute innocence to the subject criminal charges against him. The Order and Opinion effecting current jurisdiction were issued by the Court of Appeals on the 17th day of December, 2008, and a Motion for Rehearing was filed but summarily denied on the 15th day of January, 2009.

An Order of Dismissal was entered in the immediate proceeding below by the Court of Criminal Appeals of Texas, No. PD-0215-09, without an Opinion, on the 3rd day of June, 2009, reciting that the filing of the Petition was untimely, notwithstanding, a letter from the Clerk of the Court of Appeals, Ninth District of Texas, dated the 8th day of April, 2009, acknowledging that the Petition was timely filed, by ten (10) days, on the 8th day of April, 2009, in compliance with the extension granted by the Court of Criminal Appeals on the 18th day of February, 2009, and in conformity with **Vernon's Ann. Rules Ap. Proc., rule 68**, which requires no further filing initiatives by the Appellant, Petitioner herein, to perfect the docketing process from No. 09-07-00404-CR, in the Court of Appeals, Ninth District of Texas.

In the context of Respondent's failure to honor **Title 28, United States Code, Section 1446(c)(3)**, without explanation, a copy of the Petition, with Appendix, is being served on the

Solicitor General of the United States and the State Prosecuting Attorney for Respondent, addressed, to wit:

Hon. Gregg Abbott
Attorney General of Texas
Attn: State Prosecuting Attorney
P. O. Box 12405
Austin, Texas 78711;
Ph. 512 463-2009
and
Office of the Solicitor General
of the United States
U. S. Department of Justice
950 Pennsylvania Avenue, Room 5614
Washington, D. C. 20530-0001
Ph. 202 514-2000,

as indicated by the Proof of Service submitted herewith.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional provisions involved as a basis for this Petition for Writ of Certiorari include **United States Code, Cons. Art. III, and Amends. I, V, VI, VII, XIV and XV**. Statutory authorities involved are **Title 28, United States Code, Sections 1331, 1343, 1443, 1446(c)(3), 1447(d), 1651 and 1652**. Also, invoked are **Title 42, United States Code, Sections 1981, 1982, 1983, 1985 and 1988**. The referenced restraints upon Petitioner's liberty precluded voluminous

copying and verbatim textual recitations under **U.S. Sup. Ct. Rules, rule 14.1(f), 28 U.S.C.A.**, or the furnishing of such items for a more extensive Appendix.

Specimen State statutory authorities disregarded by the Texas appellate courts pertinent to their jurisdiction and duties are **V.T.C.A. Government Code §§ 22.001, 22.220 and 22.221**. State statutory authorities prescribing limits and boundaries for the District Court of Polk County, Texas, No. 18,176 and 18,177, which such District Court abused and disregarded, and which the appellate courts have refrained from addressing or construing include **Vernon's Ann. C.C.P. , art. 42.12, Section 23(a) and (b), art. 44.02, and art. 44.04(a) and (g)**, in addition to **V.T.C.A. Penal Code §§ 12.35, 32.45 and 35.02**, and related provisions.

STATEMENT OF THE CASE

The immediate Petition for Writ of Certiorari emanates related to and from an unconstitutional and abusive State prosecution which Petitioner immediately removed to the United States District Court, **Ratcliff v Indymac**, etc., et al., No. 9:05-CV-00070 JKG/TH, US DC ED TX, Lufkin Division, Doc. Nos., 17, 25, 26, 127; also, District Court of Polk County, Texas Nos 18,176 and 18,177 ; also, see **In re Elijah White Ratcliff**, supra.), as he is denied and cannot enforce in the Courts of Texas his rights under the Constitution and statutory provisions for Civil Rights of persons designated by **Title 28, United**

States Code, Section 1443.

Despite the timely filing and service of the Petition for Removal, the State Presiding Judge continued, under color of authority of State law, upon a course to deprive Petitioner of his freedom by infringing specified State and Federal Constitutional provisions even though no remand Order was entered by the United States District Court (See **Ratcliff v Indymac**, etc., et al., supra., Doc. Nos. 1, 2, 17, 26, 127).

Following the State trial Court's fabrication of a conviction, Petitioner filed a timely Notice of Appeal (Appendix A, Entry of 10-28-2005).and State Court Petition for Writ of Mandamus (Ibid, Entries of 11-07-2005), but such State appellate courts have refused to address the issues and the relief to which Petitioner is entitled, or require the District Clerk and Court Reporter to provide the plenary Appellate Record, even though it was properly requested by Petitioner, which Record would show the innocence of Petitioner to the criminal charges against him, consistent with **Vernon's Ann. Tex. Rules Ap. Proc. Rules 12.2(a), (b) and (d), 20.2, 27, 35.3 and 38.5(d)**. (See **Ratcliff v State**, No. 09-05-00480 - CR and No. 09-07-00404-CR, supra.,with focus on Brief of Appellant and Preliminary Appendix to Brief of Appellant filed November 7, 2005: Appendix D, entry of 11-07-2005, p. A-9; also, Brief of Appellant Supplemental filed in the Court of Appeals, No. 09-07- 00404-CR, on April 18, 2009: Appendix E: entries of 04-23-2008 and 07-01-

2008, p. A-12).

The partial record below, erroneously, does not include proceedings from the Indictment during the calendar year 2005, to September 3, 2007 (Appendix D and Appendix E, pp A-7 - A-14), nor particularized items from Petitioner's Fourth, Fifth, and subsequent, notices of Appeal and itemized request for additional record items (Appendix E: Entries of 11-19-2007; 11-28-2007; 12-12-2007; 01-30-2008; 02-20-2008; 02-26-2008 04-10-2008; and 07-01-2008, pp A-10 - A-14), thereby, circumventing a reflection at full scope of the void character of the Indictment; pre-trial orders; Judgment of "conviction;" and Order of Probation Revocation (See **Ratcliff v State**, No. 09-07-00404-CR., supra., Brief of Appellant-Supplemental, Argument I to II.B, inclusive: Appendix p. A-12, entry of 7/01/2008).

REASONS FOR GRANTING THE PETITION FOR WRIT OF CERTIORARI

I. PETITIONER WAS ENTITLED TO REMOVE FROM STATE COURT TO THE UNITED STATES DISTRICT COURT AN ABUSIVE PROSECUTION WHEREIN HE IS DENIED AND CANNOT ENFORCE IN THE COURTS OF SUCH STATE HIS RIGHTS UNDER SPECIFIED CONSTITUTIONAL AND STATUTORY PROVISIONS FOR EQUAL

RIGHTS OF CITIZENS AND ENUMERATED PERSONS.

Title 28, United States Code, Section 1443, et seq., provides, explicitly, for the removal of a State prosecution to the United States District Court when the citizen is denied or cannot enforce in that State's courts his rights under laws providing for equal rights of citizens (Appendix F-1, p. A-15). **Title 28, United States Code, Section 1446(c)(3)**, provides that no "conviction" shall be rendered by a State court in the removed action unless an order is entered remanding the proceeding to State court, to wit: "except that a judgment of conviction shall not be entered unless the prosecution is first remanded." (Appendix F-2, p. A-16).

The proceedings below were effectively removed to the United States District Court wherein an appearance is reflected from the Docket Sheet by the District Attorney of Polk County, Texas, the subject venue (See **Ratcliff v Indymac**, etc., et al., supra; also, (Clerk's Record, supplemental...).

Significantly, further, Petitioner filed in the State trial Court, No. 18,176, 258th Judicial District, Polk County, Texas, a Motion file stamped the 26th day of January, 2007, urging it to defer a "noticed" "Probation Compliance Hearing" to the pending Federal removal proceeding, referencing **Title 28, United States Code, Section 1446(c)(3) and 1447(d)**, but the

Presiding Judge totally disregarded the subject Federal jurisdiction. *Baines v City of Danville, VA*, 357 F.2d 756 (4th Cir. 1966), Certiorari granted, affirmed, 86 S.Ct. 1915, 384 U.S. 890, 16 L.Ed2d 121; *In re Subpoena Duces Tecum*, 439 F.2d 740 9DC Cir. 2006), 742, 750, 754.

II. THE APPEAL BOND WITH NOTICE OF APPEAL INITIALLY FILED AND POSTED BY PETITIONER WAS SUFFICIENT TO SOLICIT INITIATION OF THE RECORD PREPARATION PROCESS AS EFFECTIVELY SERVED ON THE STATE DISTRICT CLERK AND COURT REPORTER FOR THE 258TH JUDICIAL DISTRICT OF TEXAS.

Immediately following the trial Court proceedings below, during the calendar year 2005, Petitioner was able to post security for costs through two (2) solvent corporate Sureties which Appeal Bond was duly filed and served (Appendix A: Entry of 10-28-2005, p. A-9). Neither the District Clerk nor the Court Reporter responded to the subject filing and service, and in the context of the void character of the subject trial Court proceedings, Petitioner proceeded with the filing of a "Preliminary Appendix to Brief of Appellant" and "Brief of Appellant," purporting to invoke the inherent jurisdiction and duties of the Texas Appellate Courts to appreciate and adjudicate the void status of the trial Court "conviction." **V.T.C.A. Government Code §§**

22.001, 22.220 and 22.221; Title 28, United States Code, Section 1446(c)(3) and 1447(d), *State of Georgia v Rachel*, **supra.**; *Bracy v Gramley*, 117 S.Ct. 1783 (1997), 520 U.S. 879, 138 L.Ed.2d 97.

The Texas Appellate Courts declined to exercise their jurisdiction to affirmatively address and adjudicate the jurisdiction relied upon by Petitioner, so the contest was continued, otherwise (Appendix A - Appendix E, pp A-1 - A-14, inclusive; See **Ratcliff v State, supra.**, ; also, **In re Elijah White Ratcliff**, No. 09-06-00029-CV, Court of Appeals, Ninth District of Texas).

III. FOLLOWING THE EFFECTIVE DIMINUTION OF PETITIONER'S SOLVENCY STATUS, THE COURT OF APPEALS ABUSED ITS DISCRETION IN DECLINING TO ASCRIBE AND HONOR THE ULTIMATE ORDER OF THE TRIAL COURT SUSTAINING PETITIONER'S MOTION AND AFFIDAVIT TO PROCEED IN THE APPEAL WITHOUT PREPAYMENT OF COSTS.

The retaliatory misconduct of Respondent and joint tortfeasors, under color of authority of State law, rapidly diminished Petitioner's personal solvency status, and, thereby, his capacity to encumber property of his fiduciaries, so he filed subsequent Notice of Appeal documents

accompanied by motions and affidavits to proceed without prepayment of costs (Appendix D: Entries of 12-28-2005; 03-01-2006, pp A-9, A-8; Appendix E: Entries of 08-13-2007, 08-21-2007; and 09-24-2007, pp A-14, A-13). At an initial hearing on the Affidavit, Petitioner objected to taking the witness stand and being subjected to unlimited questioning in the environment of the void "conviction" and the jeopardy his responses could place on his fiduciaries in each of the Surety corporations, citing *NAACP v Alabama*, 377 U.S. 288 (1966), following denial of the Motion (Court Reporter's Record ...; Appendix D: Entries of 11-07-2005; 04-17-2006; 05-15-2006; 05-30-2006; 08-30-2006 and 09-14 - 2006, pp A-9, A-8).

Following "Revocation of Probation" by he State trial Court, and Petitioner was arrested and continuously detained by directives of such trial Court, Petitioner concluded that sustaining the Motion to Proceed Without Prepayment of Costs outweighed the risks to his fiduciaries which could conceivably arise from his testimony. Thus, Petitioner elected to take the witness stand in support of his Affidavit. However, the Presiding Judge entered an Order effectively granting the Motion to Proceed Without Prepayment of Costs without requesting or permitting Petitioner to take the witness stand (Clerk's Record...; Reporter's Record...; Appendix E: Entries of 11-19-2007; 11-28-2007; 12-12-2007; 01-30-2008; 02-20-2008; 04- 23-2008; 07-01-2008; and 05-28-2009, pp A-13, A-12, A-11).

The Appellate Record sought by **In re Elijah White Ratcliff**, U.S. Sup. Ct., supra., would reflect and indicate the error committed by the Court of Appeals in failing to honor the trial Court's findings of fact that Petitioner was entitled to proceed without prepayment of costs because there was no evidence to the contrary. *Whitehead v State*, 130 S.W.3d 866 (Tex. Cr. App. 2004).

Concrete evidence must exist in the record to show that a defendant's expenses are indeed unreasonable and overly burdensome on his limited resources. A court cannot presume unreasonableness; some aspect of the record must support such a determination. **United States Code, Const. Amend. XIV**; *Tuck v State*, 215 S.W.3d 411 (Tex. Cr. App. 2007), 415.

Finally, it should be emphasized and clarified that Petitioner has a statutory duty to refrain from excessively encumbering and risking losses to the assets and properties of his fiduciaries, individually and collectively, as a function of "misapplication of fiduciary property," and such duty was, unavoidably, a consideration in drafting each computation of his ability to pre-pay court costs or give security therefor. **United States Code, Const. Amends. V and XIV, 28 U.S.C.A.; V.T.C.A. Penal Code § 32.45**; *Coleman v State*, 131 S.W.3d 303 (13th Dist. 2004), rehearing overruled, Petition for Discretionary Review refused.

IV. PETITIONER'S FILING OF A PETITION FOR DISCRETIONARY REVIEW WAS TIMELY UNDER THE PERTINENT RULES OF COURT.

Petitioner sought an extension of time consistent with **Vernon's Ann. Rules Ap. Proc., rule 68.2(e)**, which was granted by the Court of Criminal Appeals on February 18, 2009, extending the filing deadline for a Petition for Discretionary Review to April 17, 2009. (Appendix E, Entries of 12-17-2008; 01-07-2009; 01-15-2009; 02-18-2009; 05-28-2009; 06-03-2009; 06-19-2009; and 08-19-2009, pp A-12, A-11).

As reflected by the referenced Docket Sheet, Petitioner submitted his Petition for Discretionary Review to the Clerk of the Court of Appeals, acknowledged by her letter of April 8, 2009, as having been received and filed timely, but disposed through refusal of the Court of Criminal Appeals on July 19, 2009 (Appendix A, p. 1).

V. CONTRAVENTION BY THE STATE TRIAL COURT OF PROVISIONS UNDER THE FEDERAL CIVIL RIGHTS REMOVAL STATUTE RENDERED ITS JUDGMENT OF CONVICTION VOID .

Based on considerations similar to the discussion under Argument I above, all orders entered by the State courts and agencies

purporting to establish a "conviction" against Petitioner arising out of the removed proceeding are null and void because no remand Order was ever rendered by the United States District Court. **Title 28, United States Code, Section 1446(c)(3) and 1447(d)**; *Baines v City of Danville*, **VA,, supra**.; *Seaton v Jabe*, 492 F.2d 79 (6th Cir. 1993), 80.

The Petition for Removal and its supplementation as filed in the United States District Court, with a copy of all documents filed, also, in the State trial Court, adequately set forth claims establishing jurisdiction (**Ratcliff v Indymac**, etc., et al., No. 9:05-CV-00070 JKG/TH, US DC ED TX, Lufkin Division, Doc. Nos., 17, 25, 26, 127; also, District Court of Polk County, Texas Nos 18,176 and 18,177). **Fed. Rules Civ. Proc., rule 60(b), 28 U.S.C.A.**; **Fed Rules Evid, Rule 201(d), 28 U.S.C.A.**; **Title 28, United States Code, Sections 1343, 1443, 1446(c)(3) and 1447(d)**; *Lefton v Hattiesburg*, 145 F3d 211 (5th Cir. 1964); *West Publishing Co. v Mead Data Cent., Inc.*, 610 F. Supp. 1571 (1985), 227 U.S.P.Q. 631, affirmed 799 F.2d 1219 (8th Cir. 1986), 230 U.S.P.Q. 801, Certiorari denied 107 S.Ct. 962, 479 U.S. 1070, 93 L.Ed.2d 1010.

VI. PRE-TRIAL ERRORS COMMITTED BY THE TRIAL COURT REGARDING DISCLOSURES; VAGUENESS OF THE INDICTMENT; DOUBLE JEOPARDY; ACCESS TO AND CONFRONTATION OF

WITNESSES; AND A HISTORY OF GRAND JURY DISCRIMINATION UNABATED FOR THE IMMEDIATE PROCEEDING RENDER THE JUDGMENT OF CONVICTION VOID.

The State trial Court scheduled and heard Petitioner's Motion for Disclosures on July 5, 2005 (Clerk's Record, Vol. I, pp 031, 042; Reporters Record...). However, she appeared predisposed toward a conviction and declined, improvidently, to properly grant the Motion, and the plenary Appellate Record by the District Clerk and the Court Reporter under the supervision of the Presiding Judge should be ordered produced and certified before the Supreme Court of the United States, forthwith, as it will reflect that Petitioner was prejudiced by the ruling. Such ruling allowed the prosecution to enter evidence of a computer print-out reflecting the duration that the vehicle upon which the subject insurance claim was made had been in the custody and control of the shady wrecker driver without any timely notice by such controversial party to Petitioner before it was delivered to the local Ford dealership. Such document was not provided the Defendant, Petitioner, prior to being offered as evidence, during the trial proceeding, and the absence of such disclosure hindered Petitioner's preparation for cross examination of the wrecker driver, and, further, prevented utilization of such item, with other evidence, to establish larceny on the part of the driver, or whoever was responsible for his

excessive conduct, as no evidence was offered during the proceeding showing that, in order to move a mobile home off the same premises, it was necessary to remove such vehicle from its proximity with the premises where it was parked. **Vernon's Ann. Rules Evid. Rule 201(d)**; *Ex Parte Crenshaw,* 25 S.W.3d 761 (1st Dist. 2000), Petition for Discretionary Review refused.

Petitioner, having been admitted to practice law in the State of Texas, has professional knowledge of discrimina-tory Grand Jury practices in Polk County, Texas. Thus, application for a couple of *subpoenas duces tecum* were submitted to the District Clerk months before the trial, but such Clerk circumvented proper execution of such subpoenas as sought requesting Grand Jury records and evidence pertinent to recusal. However, the fraudulently abbreviated record herein fails to depict the errors in substantive format (Clerk's Record, Vol. I, p. 42: Hearing of 10/24/2005).

Judge Elizabeth Coker is, notoriously, the daughter of the late Judge Lynn Coker and the granddaughter of the late Judge Ernest Coker, both of whom presided in the District Court of Polk County, Texas, and both of whom were participants in and engaged Civil Rights contraventions which comprise elements of the continuing jurisdiction invoked by Petitioner's Civil Action: **Ratcliff v Indymac**, etc., et al., **supra**., under **Fed. Rules Civ. Proc., rule 60(b), 28 U.S.C.A.** and **Title 28, United States**

Code, Section 1447(d).

Well established precedents disqualified Judge Elizabeth Coker from presiding in the proceeding below, but she declined recusal, and the pertinent State judicial officials improvidently denied Petitioner's contest to her qualifications. **Vernon's Ann. Rules Civ. Proc., rule 18(b)**; **Vernon's Ann. C.C.P., art. 30.01**; *Ex Parte Viviere*, 699 S.W.2d 862 (Tex. Cr. App. 1991).

Additionally, certain employees, officials and agents of banks and insurance companies pertinent to the proceeding were subpoenaed by Petitioner, including at least two conforming to the **Uniform Out-of-State Witness Act** (Clerk's Record, Vol. I, pp 031 - 032, 42; also, related hearing of 10-25-2005: No Court Reporter's transcription, notwithstanding, Petitioner's requests in the trial Court in addition to his objections filed in the Court of Appeals of 11-19-2007; 12-12-2007; and 02-20-2008; Appendix C: Entries of 11-19-2007; 12-12-2007; and 02-20-2008). **Vernon's Ann. Tex. Rules Ap. Proc. rules 20.2, 27 and 38.5(d)**; *Ex Parte Crenshaw*, **supra**.

VII. THE POWERS AND DUTIES OF THE APPELLATE COURTS OF THE STATE OF TEXAS EXTENDED TO MANDATING THE VOID CHARACTER OF EACH JUDGMENT OF CONVICTION FROM THE TRIAL COURT ATTRIBUTABLE TO THE MULTIPLICITY OF PRE-TRIAL, TRIAL AND

POST CONVICTION ERRORS UPON THE COMPILATION OF THE APPELLATE RECORD AS DULY REQUESTED BY PETITIONER.

The commission of error by the trial Court, though extra-judicial, invoked the inherent and statutory powers of the State Appellate Courts to address the lower court's malfeasance as contemplated in the Brief of Appellant geared to Preliminary Appendix filed under docket No. 09-05-00480-CR (Appendix E: Entries of 11-07-2005, p. A-8; the Motion for Rehearing , Appendix D: Entry of 04-17-2006, p. A-8; and the Petition for Discretionary Review (Appendix D, Entry of 05-30-2006, p. A-8). **Vernon's Ann. Tex. Rules Ap. Proc. rules 20.2, 27, 38.5(d), 43.2 and 78**; *Ex Parte Viviere*, **supra**; *Bracy v Gramley*, **supra**.

The State Appellate Courts notoriously disregarded their jurisdictional duties pursuant to **V.T.C.A. Government Code §§ 22.001, 22.220 and 22.221** (Appendix A, Appendix B and Appendix C, pp A1 - A6, inclusive) which, at this stage, had not entailed a prolonged detention of Petitioner. However, the trial Court committed further error in purporting to revoke a conditional probation (Clerk's Record, Vol. I, p. 2) resulting in extended State Jail detention contestable, also, pursuant to **Vernon's Ann. C.C.P. , art. 42.12, Section 23(b)**, which provides for the "... right to appeal ..."which "shall be accorded a defendant at

the time he is placed on community supervision" and "when notified of revocation, he may appeal the revocation" (Appendix F, p. A-19).

Petitioner is authorized by law to raise on direct Appeal the issue of whether the original Judgment of Probation was not authorized by law, and the defect which rendered the sentence void could be raised at any time (Clerk's Record, Vol. I, pp 031-032, 042; Reporter's Record...). *Fullbright v State*, 618 S.W.2d 808 (Tex. Cr. App. 1991).

VIII. PETITIONER IS ENTITLED TO THE PLENARY APPELLATE RECORD AS PROPERLY REQUESTED RELEVANT TO THE IMMEDIATE APPEAL INCLUDING A MANDATE OR WRIT DIRECTING THE VOIDING, EXPUNGING AND REDRESSING HIS CONVICTION AND DETENTION BY RESPONDENT AND ITS JUDICIAL AND CORRECTIONAL OFFICIALS.

The subject Motion to revoke probation recites a "conviction" which precedes any "remand order" by the United States District Court (Clerk's Record, *Ibid.*). Thus, such purported "conviction" is void. *Seaton v Jabe*, **supra.**, at p. 80. However, the aggressive and abusive nature of the trial Court (Clerk's Record, Vol. I, pp 031-032, 040 - 045; Reporter's Record...), and, particularly, the Motion for Recusal of 10-04-2005 and 10-06-2005, and otherwise, which this Court has been requested to order pertinent clerical personnel to

produce and certify, eliminate speculation about what could transpire and enables factual observations of actual adversarial developments, none of which merit or justify the "conviction" and resulting sentence assessed against Petitioner (Appendix F). **Vernon's Ann. C.C.P., art. 42.12, Section 23(a) and (b), and art, 44.04(a) and (g); V.T.C.A. Penal Code §§ 12.35, 32.45 and 35.02**; *Hull v State*, 29 S.W.3d 602 (1st Dist. 2000), rehearing overruled, Petition for Discretionary Review granted, 67 S.W.3d 213, on remand 2002 WL1481258; *Deitik v State*, 58 S.W.3d 794 (2nd Dist. 2001); *Munoz v State*, 133 S.W.3d 836 (8th Dist. 2004).

Conclusion:

The incurrence of a delay in adjudicating a direct criminal appeal beyond two years from the filing of the notice of appeal gives rise to a presumption that the State appellate process is ineffective. *Harris v Champion*, 15 F.3d 1538 (10th Cir. 1994), 1556; *Geanes v Henderson*, 725 F. Supp. 681 (E.D. NY 1989, 685.

The Supreme Court of the United States should issue its Writ of Certiorari and direct the District Clerk and Court Reporter, along with the Presiding Judge of the 258th Judicial District of Texas, No. 18,176 and 18,177, Polk County, Texas, to supplement, certify and produce for the United States Supreme Court, the plenary Appellate Record as duly requested below by

Petitioner including each item specified within his Petition for Writ of Mandamus: **In re Elijah White Ratcliff**, Petitioner, **supra**., and the immediate Petition for Writ of Certiorari, and directing, further, the Clerk of the Court of Criminal Appeals of Texas to prepare, certify and produce or trace for the Supreme Court of the United States the subject plenary Appellate Record, as described above, of proceedings in the trial Court, the Court of Appeals, Ninth District of Texas, numbered as 09-05-00480-CR as well as 09-07-00404-CR, and the Court of Criminal Appeals, numbered PD-0821-06 as well as PD-0215-09, for further review of pertinent aspects on Petition for Writ of Certiorari herein. **Title 28, United States Code, Sections 1257(a), 1651, 1652, 2201 and 2202**. *Wolf v McDonell*, 94 S.Ct. 2963 (1974), 418 U.S. 539, 41 L.Ed.2d 935.

Date: October 21, 2009

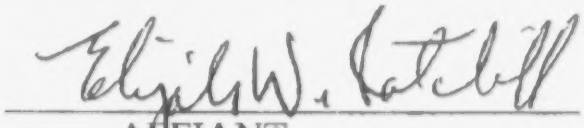
PETITIONER

Elijah W. Ratcliff
P. O. Box 862
Livingston, Texas 77351
Ph. 903 948-3089

AFFIDAVIT OF VERACITY

Affiant, Elijah White Ratcliff, states under penalties of perjury as if executed before a proper Notary Public, and in accordance with Title 28, United States Code, Section 1746, that each of the matters of fact asserted in the foregoing Petition for Writ of Certiorari is within his personal knowledge true and correct, *in toto*.

SUBSCRIBED this 21st day of October, 2009.



AFFIANT

No. _____

TX CCrA NO. PD-0215-09
TX COA NO. 09-05-00480-CR/
TX COA NO. 09-07-00404-CR

In The

Supreme Court Of The United States

ELIJAH WHITE RATCLIFF,
Petitioner

v.

THE STATE OF TEXAS,
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS FOR THE NINTH
DISTRICT OF TEXAS

APPENDIX

NO. _____
NO. TX CCA NO. PD-0215-09

IN THE SUPREME COURT OF THE
UNITED STATES

ELIJAH WHITE RATCLIFF, PETITIONER
VS
THE STATE OF TEXAS, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE NINTH
DISTRICT OF TEXAS
APPENDIX A TO PETITION FOR WRIT
OF CERTIORARI: DOCKET ENTRY OF
REFUSAL TO GRANT PETITION FOR WRIT
OF CERTIORARI COMPRISED OF
PAGES 1 TO 1 OF 1

Case # PD-0215-09

Event: FINAL DISP

Event Information:

Event Type: FINAL DISP

Description: Pro Se

Date: 9/22/2009 Disposition:
Refused

Opinion Written:

Before the Court

NO. TX CCA NO. PD-0215-09

IN THE SUPREME COURT OF THE
UNITED STATES

ELIJAH WHITE RATCLIFF,
PETITIONER

VS

THE STATE OF TEXAS,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS
FOR THE NINTH DISTRICT
OF TEXAS

APPENDIX B TO PETITION FOR WRIT OF
CERTIORARI: MEMORANDUM OPINION FROM
COA NO. 09-05-00480-CR COMPRISED OF
PAGES 1 TO 2 OF 2

In The Court of Appeals
Ninth District of Texas
at Beaumont

NO. 09-05-480 CR

ELIJAH WHITE RATCLIFF,
Appellant
v.
THE STATE OF TEXAS,
Appellee

On Appeal from the 258th District Court
Polk County, Texas

Trial Cause No. 18,176

MEMORANDUM OPINION

Elijah W. Ratcliff appealed his conviction for insurance fraud and requested a free record. See Tex. R. App. P. 20.2. The trial court denied the request for indigent status after the appellant refused to testify in support of his request.

On February 9, 2006, we affirmed the trial court's ruling and notified the parties that the appeal would be dismissed for want of prosecution unless the record was filed by March 13, 2006.

Neither the clerk's record nor the reporter's record of the case below has been filed.

The appellant is not indigent and is not entitled to proceed without payment of costs. Tex. R. App. P. 20.2. There being no satisfactory explanation for the failure to file the clerk's record, the appeal is dismissed for want of prosecution. Tex. R. App. P. 37.3(b).

APPEAL DISMISSED.

STEVE McKEITHEN
Chief Justice

Opinion Delivered April 8, 2006

Do Not Publish

Before McKeithen, C.J., Gaultney, and Kreger, JJ.

NO. TX CCA NO. PD-0215-09

IN THE SUPREME COURT OF THE
UNITED STATES

ELIJAH WHITE RATCLIFF, PETITIONER
VS
THE STATE OF TEXAS,
RESPONDENT

ON PETITION FOR WRIT OF
CERTIORARI TO THE COURT
OF APPEALS FOR THE NINTH
DISTRICT OF TEXAS

APPENDIX C TO PETITION FOR
WRIT OF CERTIORARI: MEMORANDUM
OPINION FROM COA NO. 09-07-OO404-CR
COMPRISED OF PAGES 1TO 3OF 3

In The Court of Appeals
Ninth District of Texas
at Beaumont

NO. 09-07-404CR

ELIJAH WHITE RATCLIFF,
Appellant
v.
THE STATE OF TEXAS,
Appellee

On Appeal from the 258th District:
Court of Polk County, Texas

Trial Cause No. 18,176

MEMORANDUM OPINION

In 2005, a jury found Elijah White Ratcliff guilty of insurance fraud. Ratcliff v. State, No. 0905-480 CR, 2006 WL 891161, at *1 (Tex. App.-Beaumont Apr. 5, 2006, pet. ref'd). (not designated for publication).

After assessing Ratcliff's punishment at two years' confinement, the trial court suspended the sentence and placed Ratcliff on community supervision for five years.

Ratcliff appealed his conviction and requested a free record. Id. The trial court denied his request for indigent status after he refused to testify in support of his request. Id.

We affirmed the trial court's ruling on Ratcliff's record request and notified the parties that the appeal would be dismissed for want of prosecution unless the appellate record was filed by a specified date. Id. Because the record was not filed and because we received no satisfactory explanation tor Ratcliff's failure to file the record, we dismissed the appeal in 2006 for want of prosecution. Id.

In 2007, the State filed a motion to revoke Ratcliff's community supervision alleging that he had violated four conditions imposed by the trial court. At the revocation hearing, Ratcliff pled "not true" to each allegation. At the conclusion of testimony from both parties, the trial court revoked Ratcliff's community supervision and sentenced him to two years' confinement in the State Jail Division of the Texas Department of Criminal Justice. Ratcliff appeals.

Ratcliff's appellate counsel filed an Anders brief See Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18L.Ed.2d 493 (1967). Counsel's brief meets the Anders requirements by presenting a professional evaluation of the record that demonstrates why there are no arguable grounds to be advanced. See High v. State. 573S.W2d 807,813(Tex.Crim.App. 1978). Counsel provided Ratcliff with a copy of the brief. Subsequently, we granted an extension of time for Ratcliff to tile a pro se brief, and he did so. On appeal, Ratcliff raises two issues: he contends that his conviction tor insurance fraud was void and that this Court has jurisdiction to reverse and render judgment in his favor.

In addressing an Anders brief and pro se response, a court of appeals may only determine (1) that the appeal is wholly frivolous and issue an opinion explaining that we have reviewed the record and find no reversible error, or (2) that arguable grounds for appeal exist and remand the cause to the trial court so that new counsel may be appointed to brief the issues. Bledsoe v. State, 178 S.W.3d 824, 826-27 (Tex. Crim. App, 2005). Having reviewed the clerk's record, the reporter's record, counsel's brief, and appellant's pro se briefs, we agree that the appeal is frivolous. See id. Therefore, we find it unnecessary to order appointment of new counsel to re-brief the appeal. Compare Stafford v. State, 813 S.W.2d 503, 511 (Tex. Crim. App. 1991). We affirm the trial court's judgment. (1)

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on December 4, 2008

Opinion Delivered December 17, 2008

Do Not Publish

Before Gaultney, Kreger, and Horton, JJ.

(1) Ratcliff may challenge our decision in this case by filing a petition for discretionary review. See Tex. R. App. P. 68; Bledsoe, 178 S.W.3d at 827.

TX CCA NO. PD-0215-09

IN THE SUPREME COURT OF THE
UNITED STATES

ELIJAH WHITE RATCLIFF,

PETITIONER
VS
THE STATE OF TEXAS,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF APPEALS FOR THE
NINTH DISTRICT OF TEXAS
APPENDIX D TO PETITION FOR WRIT OF
CERTIORARI: DOCKET SHEET FROM COA
NO. 09-05-00480-CR COMPRISED OF PAGES 1 TO
3 OF 3

Case Information: Case Number:09-05-00480-CR
Date Filed: 10/28/2005
Style: Elijah White Ratcliff v. The State

of Texas

Original Proceeding: No
Transferred From:
Transfer In Date:
Transfer Case No:
Transferred To:
Transfer Out Date:

Trial Court Information: Trial Court:258th District Court
Trial Court Judge: Judge Elizabeth Coker
Trial Court Case #: 18176
Trial Court Reporter: Graciela Cake
Punishment:

Parties: Party Party Type
Ratcliff, Elijah W. Appellant
State of Texas Criminal – State of Texas

Case Events: Date Event Type Description
1/4/2007 Letter issued by court
11/15/2006 Mandate issued
11/15/2006 Case stored
10/27/2006 Case returned from higher court
10/25/2006 Motion for rehearing disposed Pro Se
9/14/2006 Motion for Rehearing filed Pro Se
8/30/2006 Petition for Discretionary Review Filed
6/28/2006 Order Entered
5/30/2006 Petition for Discretionary Review Filed
5/18/2006 Case Forwarded to Higher Court
5/15/2006 Petition for Discretionary Review

Filed Pro Se

4/20/2006 Motion for Rehearing Disposed Appellant

4/17/2006 Motion for Rehearing Filed Appellant

4/5/2006 Memorandum opinion issued

3/23/2006 Miscellaneous Motions Appellant

3/9/2006 Miscellaneous Motions Appellant

3/8/2006 Response Appellant

3/6/2006 Miscellaneous Motions State

3/6/2006 Letter State

3/2/2006 Letter court reporter

3/1/2006 Notices filed Pro Se

2/27/2006 Miscellaneous Motions Pro Se

2/23/2006 Letter

2/9/2006 Order Entered

2/8/2006 Miscellaneous Motions Pro Se

2/6/2006 Reporters Record Filed

1/20/2006 Miscellaneous Motions Appellant

1/20/2006 Extension for record filed by tc clerk, reporter district or county clerk

1/9/2006 Response Appellant

12/28/2005 Notice of appeal w/form from trial clerk

12/28/2005 Certificate Filed

12/8/2005 Letter

11/28/2005 Writ Filed Habeas Corpus

11/17/2005 Miscellaneous Motions Pro Se

11/7/2005 Miscellaneous Motions Pro Se

11/7/2005 appendix to brief or mandamus filed

11/7/2005 Writ Filed Habeas Corpus

10/28/2005 Notice of Appeal Filed

Calendars: Set Date Calendar Type Reason Set

11/15/2006 Case Stored case stored

TX CCA NO. PD-0215-09

IN THE SUPREME COURT

OF THE UNITED STATES

ELIJAH WHITE RATCLIFF,
PETITIONER
VS
THE STATE OF TEXAS,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS
APPENDIX E TO PETITION FOR WRIT OF CERTIORARI: DOCKET SHEET FROM COA NO. 09-07-00404-CR COMPRISED OF PAGES 1 TO 4 OF 4

Case # 09-07-00404-CR

Case Information: Case Number:09-07-00404-CR
Date Filed: 8/9/2007
Style: Elijah White Ratcliff
v.
The State of Texas
Original Proceeding: No
Transferred From:
Transfer In Date:
Transfer Case No:
Transferred To:
Transfer Out Date:

Trial Court Information: Trial Court: 258th District Court

Trial Court Judge: Judge Elizabeth Coker

Trial Court Case #:18,176

Trial Court Reporter: Graciela Caka

Punishment:

Parties: party Type

Ratcliff, Elijah W. Criminal State of Texas

Case Events: Date event Type Description

9/29/2009 Mandate issued
9/29/2009 Case stored
9/25/2009 Case returned from higher court
8/19/2009 Petition for discretionary review disposed by Court of Criminal Appeals
6/19/2009 Letter filed
6/3/2009 Petition for discretionary review disposed by Court of Criminal Appeals
5/28/2009 Petition for discretionary review filed in Court of Criminal Appeals
5/20/2009 Case forwarded to higher court
4/8/2009 Petition for discretionary review filed Pro Se
2/18/2009Motion for extension of time to file petition for discretionary review disposed by Court of Criminal Appeals Pro Se

1/15/2009 Motion for rehearing disposed Pro Se

1/7/2009 Motion for rehearing filed Pro Se

12/29/2008 Letter filed Appellant

12/17/2008 Memorandum opinion issued

12/17/2008 Motion to withdraw attorney disposed Appellant

12/4/2008 Submitted

11/13/2008 Set for submission on briefs

10/28/2008 Letter received Pro Se

10/21/2008 Letter received Pro Se

8/20/2008 Letter received Pro Se

7/23/2008 Letter received Pro Se

7/1/2008 Reply brief filed Appellant

6/20/2008 Brief filed - oral argument not requested State

6/20/2008 Case ready to be set

5/30/2008 Opposition filed Appellant

5/22/2008 Motion for extension of time to file brief filed State

5/22/2008 Motion for extension of time to file brief disposed State

4/23/2008 Brief filed - oral argument not requested Pro Se

4/10/2008 Motion disposed Pro Se

3/28/2008 Letter received Pro Se

3/26/2008 Motion filed Pro Se

3/13/2008 Order entered

3/12/2008 Letter filed Pro Se

3/10/2008 Motion to withdraw attorney filed Appellant

3/10/2008 Letter received Pro Se

3/4/2008 Motion for extension of time to file brief filed Appellant

3/4/2008 Motion for extension of time to

file brief disposed Appellant
3/4/2008 Anders brief filed Appellant
3/4/2008 Letter filed appellant
2/20/2008 Objection filed Pro Se
2/19/2008 Letter received Pro Se
2/14/2008 Docketing statement filed Appellant
1/30/2008 Motion filed Pro Se
1/24/2008 Order entered
1/17/2008 Letter received Pro Se
1/14/2008 Supplemental reporters record filed
1/14/2008 Supplemental clerks record filed
1/2/2008 Letter received Appellant
12/13/2007 Order entered
12/13/2007 Letter issued by the court
12/12/2007 Objection filed Pro Se
12/11/2007 Reporters record filed
11/29/2007 Extension of time to file reporters record filed
11/29/2007 Extension of time to file reporters record disposed Court Reporter
11/28/2007 Motion filed Pro Se
11/19/2007 Objection filed Appellant
11/13/2007 Clerks record filed
11/5/2007 Letter filed Pro Se
10/11/2007 Letter received Pro Se
9/27/2007 Letter issued by the court
9/24/2007 Notice of appeal w/form from trial clerk
9/24/2007 Trial court certification filed
9/24/2007 Notice of appeal filed in court of appeals Pro Se
9/6/2007 Docketing statement filed Pro Se

8/30/2007 Letter issued by the court
8/21/2007 Notice of appeal w/form from trial clerk
8/13/2007 Notice of appeal w/form from trial clerk
8/13/2007 Notice to trial court that certification is missing
8/9/2007 Motion for bond or bail filed Appellant

Calendars: Set Date calendar Type Reason Set
9/29/2009 Case Stored Case stored

NO. TX CCA NO. PD-0215-09

IN THE SUPREME COURT OF THE UNITED STATES

ELIJAH WHITE RATCLIFF ,

PETITIONER

VS

THE STATE OF TEXAS,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS
APPENDIX F-1 TO PETITION FOR WRIT OF CERTIORARI: TEXT OF TITLE 28, UNITED

STATES CODE, SECTION 1443, PAGE 1OF 1

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 89--DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

Sec. 1443.
Civil rights cases

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights r for refusing to do any act on the ground that it would be inconsistent with such law.

(June 25,1948, ch. 646, 62 Stat. 938.)

NO. TX CCA NO. PD-021S-09

IN THE SUPREME COURT OF THE

UNITED STATES

ELIJAH WHITE RATCLIFF,
PETITIONER
VS
THE STATE OF TEXAS,
RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS
APPENDIX F-2 TO PETITION FOR WRIT OF CERTIORARI: TEXT OF TITLE 28, UNITED STATES CODE, SECTION 1446©, PAGE 1 OF 1

TITLE 28--JUDICIARY AND JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 89-DISTRICT COURTS: REMOVAL OF CASES FROM STATE COURTS

...

Sec. 1446. Procedure for removal

(c)(1)A notice of removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the notice at a later time.

(2) A notice of removal of a criminal prosecution shall include all grounds for such

removal. A failure to state grounds which exist at the time of the filing of the notice shall constitute a waiver of such grounds, and a second notice may be filed only on grounds not existing at the time of the original notice. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

3) The filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the prosecution is first remanded.

NO. TX CCA NO. PD-021S-09

IN THE SUPREME COURT OF THE UNITED STATES

ELIJAH WHITE RATCLIFF,
PETITIONER

VS

THE STATE OF TEXAS,

RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE NINTH DISTRICT OF TEXAS
APPENDIX G TO PETITION FOR WRIT OF CERTIORARI: TEXT OF VERNON'S ANN.

CODE OF CRIMINAL PROCEDURE CHAPTER 42. JUDGMENT AND SENTENCE

Art. 42.12. COMMUNITY SUPERVISION.

Purpose

Sec. 1. It is the purpose of this article to place wholly within the state courts the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of community supervision, and the supervision of defendants placed on community supervision, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas.

It is the purpose of this article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of community supervision in the public interest.

...

Sec. 23. (a) If community supervision is revoked after a hearing under Section 21 of this article, the judge may proceed to dispose of the case as if there had been no community supervision, or if the judge determines that the best interests of society and the defendant would be served by a shorter term of confinement, reduce the term of confinement originally assessed to any term of confinement not less than the minimum prescribed for the offense of which the defendant was convicted. The judge shall enter the amount of restitution or

reparation owed by the defendant on the date of revocation in the judgment in the case.

(b) No part of the time that the defendant is on community supervision shall be considered as any part of the time that he shall be sentenced to serve, except that on revocation, the judge shall credit to the defendant time served by the defendant as a condition of community supervision in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code, or another court-ordered residential program or facility, but only if the defendant successfully completes the treatment program in that facility. The right of the defendant to appeal for a review of the conviction and punishment, as provided by law, shall be accorded the defendant at the time he is placed on community supervision. When he is notified that his community supervision is revoked for violation of the conditions of community supervision and he is called on to serve a sentence in a Jail or in the institutional division of the Texas Department of Criminal Justice, he may appeal the revocation.